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UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on March 27, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-11706-5

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Delta Air Lines, Inc. filed 2/26/2002 for:

XX Waiver of dormancy condition:

**The Department has granted authority to Delta to provide service between various U.S.-Japan markets and allocated it weekly frequencies to operate these services as follows: Los Angeles-Nagoya (7 frequencies); Los Angeles-Tokyo (7 frequencies); New York-Tokyo (7 frequencies); and Portland-Osaka/Fukuoka (13 frequencies). The frequencies are subject to the condition that they will expire automatically and revert to the Department for reallocation if they are not used for a period of 90 days. The Department has previously granted Delta a waiver of the dormancy condition for these markets. The waiver was extended by Order 2001-11-15 through March 31, 2002. Delta seeks a further waiver of the 90-day dormancy condition for a period of one year. It states that economic conditions do not warrant service at this time.**

American Airlines filed an answer. Delta and Continental Micronesia filed replies.<sup>1</sup>

American Airlines opposes the grant of a dormancy waiver for Delta's Los Angeles-Tokyo and New York-Tokyo frequencies. Alternatively, if a waiver is granted, American states that it should be limited to a period of six months. American states that the 1998 Japan Memorandum of Understanding provides for 28 special frequencies that can only be used by U.S. carriers to serve Japan from certain restricted gateways, including Los Angeles. American states that it is planning to institute daily service between Los Angeles and Tokyo in the summer of 2003 and will require an allocation of 7 special frequencies to provide this service. American plans to request that its proposed service be funded from dormant special frequencies currently held by Delta and Continental Micronesia.

Delta replied that grant of its waiver through the end of the next Winter Season, *i.e.*, April 1, 2003, would not impact American's "speculative" plans to begin its service a year and a half from now. Furthermore, Delta notes that American has opposed being required to provide a 90-day notice of its service plans in another case involving Brazil that has a negative impact on Delta's ability to compete in that market. Delta, however, argues that its request for a dormancy waiver here would not interfere with American's distant plans to serve Japan and that American is seeking to acquire frequencies from a competitor and warehouse them. It states that American is already one of the largest non-incumbent carriers and has a code-share relationship with Japan Air Lines that gives it important advantages over other carriers. Delta states that these issues can be addressed later and in the meantime the dormancy waivers permit the flexibility of potential competitors to enter the market, so long as no other carrier is currently blocked from implementing service.

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<sup>1</sup> Continental Micronesia's reply was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

Continental Micronesia's answer was directed primarily at American's comments to Continental Micronesia's application for a dormancy waiver in Docket OST-2002-11614. It states, however, that American is already one of the largest carriers in the market, offering 55 weekly flights through a combination of its own flights and services offered on its code-share partner Japan Air Lines. Continental Micronesia also states that significant changes involving the bilateral regime and the marketplace may occur before American's planned service, and thus, the Department should grant the waiver requests at issue, pending further developments affecting U.S.-Japan routes.

Applicant rep.: Robert E. Cohn, (202) 663-8060 DOT analyst: Gerald Caolo, (202)-366-2406

#### DISPOSITION

**XX Granted Los Angeles-Tokyo and New York-Tokyo for six months (see remarks below)**

**XX Balance dismissed (i.e. request for longer term waiver, see below)**

**XX Granted Los Angeles-Nagoya and Portland-Osaka/Fukuoka as requested**

The above action with respect to the Los Angeles-Tokyo and New York-Tokyo frequencies was effective when taken: March 27, 2002, through October 1, 2002.<sup>2</sup>

The above action with respect to the other U.S.-Japan markets was effective when taken: March 27, 2002, through March 31, 2003.<sup>3</sup>

**XX Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

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#### Remarks:

By Order 2001-11-15, following the events of September 11, 2001, the Department granted all U.S. carriers a blanket waiver from the dormancy conditions related to their international route authorities through March 31, 2002. The Department stated that it would entertain applications to extend the dormancy waiver beyond March 31 for specific city-pair, limited-entry services where carriers can demonstrate that circumstances warrant. While we have granted Delta's request here, in part, as in the public interest, based on the circumstances stated in the request and on the comments submitted in response, there should be no expectation that an additional request will similarly be granted. Any future requests to extend the dormancy waiver for the frequencies at issue here will have to be considered in light of the specific arguments offered in support of the request and any comments that might be filed in response, and in the context of the circumstances present at that time. In this regard, we note that American Airlines has already expressed an interest in using the frequencies in the summer of 2003. In these circumstances, we are not at this time prepared to grant Delta's request for the duration that it seeks with respect to all of the frequencies at issue. Rather, we believe that the public interest is best served in this case if we limit the waiver in the New York/Los Angeles-Tokyo markets to a period of six months, i.e. through October 1, 2002, and reexamine the issues raised should Delta seek an extension of the waiver granted here.

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<sup>2</sup> Delta's waiver from the dormancy condition is effective through October 1, 2002, or until the date on which Delta begins service with these frequencies, whichever occurs earlier. The 90-day dormancy period will begin on the date Delta begins service. As to any frequency with which Delta does not begin service by October 1, 2002, its frequency allocation with respect to that frequency expires automatically.

<sup>3</sup> Delta's waiver from the dormancy condition is effective through March 31, 2003, or until the date on which Delta begins service with these frequencies, whichever occurs earlier. The 90-day dormancy period will begin on the date Delta begins service. As to any frequency with which Delta does not begin service by March 31, 2003, its frequency allocation with respect to that frequency expires automatically.

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; and (2) grant of the waiver was consistent with the public interest. To the extent not granted or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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